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... OF COURTS
... GA COUNTY

COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

CITIMORTAGE, INC.	)	CASE NO.CV-4-534146
Plaintiff	)	JUDGE CAROLYN B. FRIEDLAND
vs.	)	**AMENDED COUNTERCLAIM** (Gross negligence, Slander of Credit, Violation of 12 USC Section 2605, Emotional Distress and Declaratory relief)
LEONARD S. PRIEBE, et al.	)	
Defendants	)	JURY DEMAND ENDORSED HEREON

Now come the Defendants, LEONARD S. PRIEBE and JOANNE M. PRIEBE, and as and for their amended counterclaim, state as follows:

1. The Defendants entered into a promissory note (also referred to herein as the "Note") and mortgage agreement with Cuyahoga Savings Association on or about October 25, 1974. As part of the agreement, the Defendants' initial payment which was due on November 1, 1974, was remitted from the escrow account which had been created between the Defendants and Cuyahoga Savings Association.

2. Cuyahoga Savings Association transfered its interest in and to the note and mortgage.

3. Plaintiff, CITIMORTGAGE, INC. purchased the above-described note and mortgage.

4. At all times, the Defendants continued to make regular monthly mortgage payments to the holder of their note and mortgage.

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5. The Defendants' records indicate that the promissory note was paid in full on July 1, 2003.

6. On or about September 3, 2003, Plaintiff, CITIMORTGAGE began contacting the Defendants regarding an alleged balance remaining on the promissory note.

7. Defendant LEONARD PRIEBE repeatedly requested a complete payment history and a copy of the original Note and Mortgage in an effort to resolve the dispute. (See Exhibit "A" which is attached hereto and incorporated herein by reference.)

8. In violation of the Fair Debt Collection Practices Act, Plaintiff CITIMORTGAGE never provided the above requested information.

9. Although believing that their mortgage obligation to Plaintiff CITIMORTGAGE was fully satisfied, in good faith, the Defendants made three (3) additional payments, under protest, in an effort to resolve the dispute.

10. During the above-described time period while the Defendants were making the disputed payments, the Defendants continued to contact Plaintiff CITIMORTGAGE regarding the dispute and continually requested payment information. (See Exhibit "B" which is attached hereto and incorporated by reference herein.)

11. The Plaintiff, CITIMORTGAGE not only failed to supply the Defendants with an accounting, but instead, filed the within complaint.

12. The filing of the within complaint has adversely affected the Defendants credit rating and ability to obtain further credit.

13. The filing of the within complaint has clouded the Defendants' title to their real property.

14. The filing of the within action has lowered the Defendants' credit rating.

15. Defendant JOANNE PRIEBE, is presently wheelchair bound and has been suffering

from cardiac failure. This medical condition requires her to employ an oxygen tank from time to time in order to properly breathe.

16. Instead of serving Defendant JOANNE PRIEBE by U.S. mail, the Plaintiff, CITIMORTGAGE paid to have a process server deliver a copy of the complaint to her home.

COUNT ONE
Gross Negligence

17. The Defendants reallege paragraphs one (1) through sixteen (16) as if fully written herein.

18. Plaintiff CITIMORTGAGE has failed to maintain a proper accounting for the Defendants' payments for the Note.

19. Plaintiff CITIMORTGAGE had a duty to administer the terms of the Note and mortgage in a fair manner, determine the accurate amount owed by the Defendants on the Note and to provide the Defendants with a correct payment history.

20. Plaintiff CITIMORTGAGE breached its above-described duty by failing to accurately determine the amount owed on the Note and not providing the Defendants with an accurate payment history.

21. That as a result of Plaintiff CITIMORTGAGE's gross negligence, Defendants have been damaged in an amount to be proven at trial.

COUNT TWO
Violation of 12 USC Section 2605
Servicing of mortgage loans

22. The Defendants reallege paragraphs one (1) through twenty (20) as if fully written herein.

23. Pursuant to 12 USC Section 2605, a loan servicer has a duty to respond to borrower inquiries for information relating to the servicing of such loan.

24. On at least three (3) separate occasions, Plaintiff CITIMORTGAGE failed to provide a written response to Defendant LEONARD PRIEBE, acknowledging receipt of the correspondence within twenty (20) days.

25. That as a result of this violation of federal statute, Defendants are to be granted any actual damages to the borrowers as a result of the failure and any additional damages as the court may allow.

COUNT THREE
Violation of 12 USC Section 2605
Administration of Escrow Accounts

26. The Defendants reallege paragraphs one (1) through twenty (20) as if fully written herein.

27. Pursuant to 12 USC Section 2605, the servicer has a duty to make payments from the escrow account for taxes, insurance premiums, and other charges in a timely manner as such payments become due.

28. The Plaintiff, CITIMORTGAGE, failed to make timely payments from the escrow for the Defendants' real estate taxes.

29. The Plaintiff, CITIMORTGAGE, failed to make timely payments from the escrow for the Defendants' homeowner's insurance.

30. That as a result of these violations of federal statute, Defendants are to be granted any actual damages to the borrowers as a result of the failure and any additional damages as the court may allow.

COUNT FOUR
Slander of Credit

31. The Defendants reallege paragraphs one (1) through twenty (20) as if fully written herein.

32. Plaintiff CITIMORTGAGE filed a complaint in foreclosure before determining if the Note had been paid in full

33. After the filing of the within action, Defendant LEONARD PRIEBE attempted to obtain credit for a business opportunity.

34. Because of the foreclosure action, the Defendant's credit rating was lowered and he was unable to obtain the credit necessary to take advantage of his potential business opportunity. (See Exhibit "C" which is attached hereto and incorporated herein by reference.)

35. The business opportunity would have been worth at least One Hundred Thousand Dollars ($100,000.00) to Defendant LEONARD PRIEBE.

36. That as a result of Plaintiff CITIMORTGAGE's filing of the within action, Defendant LEONARD PRIEBE was damaged in an amount of at least One Hundred Thousand Dollars ($100,000.00).

COUNT FIVE
Emotional Distress from Service of Process

37. The Defendants reallege paragraphs one (1) through twenty (20) as if fully written herein.

38. After the Plaintiff CITIMORTGAGE had Defendant JOANNE PRIEBE served by a bailiff on the front lawn of her residence, Mrs. Priebe became so upset that she suffered shortness of breath and acute chest pains.

39. Because of the above-described medical problems, Defendant JOANNE PRIEBE was forced to go to her doctor's office for medical attention.

40. That as a direct result of the Plaintiff's actions, Defendant JOANNE PRIEBE continues to become upset and suffer as a result, additional health problems.

41. That as a direct result of Plaintiff's actions, Defendant JOANNE PRIEBE was damaged in an amount to be determined at trial.

COUNT SIX
Emotional Distress from Filing of Foreclosure Action

42. The Defendants reallege paragraphs one (1) through twenty (20) as if fully written herein.

43. As a result of the foreclosure action being filed and the resulting financial and emotional pressure, Defendants LEONARD PRIEBE and JOANNE PRIEBE have been having marital difficulties.

44. That as a direct result of Plaintiff's actions, Defendants were damaged in an amount to be determined at trial.

COUNT SEVEN
Punitive Damages

45. The Defendants reallege paragraphs one (1) through twenty (20) and thirty-two (32) through forty-two (42) as if fully written herein.

46. That as a result of Plaintiff's willful and/or negligent tortious actions above described, that the Defendants be compensated in an amount of at least Five Hundred Thousand Dollars ($500,000.00).

COUNT EIGHT
Attorneys' Fees

47. The Defendants reallege paragraphs one (1) through twenty (20) and thirty-two (32) through forty-two (42) as if fully written herein.

48. That as a result of Plaintiff's willful and/or negligent tortious actions above described, that the Defendants be compensated for their attorney's fees.

WHEREFORE, Defendants LEONARD PRIEBE and JOANNE PRIEBE request this Court to grant them judgment against the Plaintiff, CITIMORTGAGE for the following:

1. Under Count One, for Plaintiff CITIMORTGAGE to be found to have committed gross negligance with the consequential damages to be proven at trial;

2. Under Count Two, for Plaintiff CITIMORTGAGE to be found to have violated 12 USC Section 2605 in the servicing of the subject mortgage with the actual damges to be proven at trial in addition to Defendants' attorneys' fees;

3. Under Count Three, for Plaintiff, CITIMORTGAGE to be found to have violated 12 USC Section 2605 in regard to payment of taxes and insurance from the escrow fund with the actual damages to be proven at trial in addition to Defendants' attorneys' fees;

4. Under Count Four, for Plaintiff, CITIMORTGAGE to be found to have slandered Defendants' credit with damages in an amount of at least One Hundred Thousand Dollars ($100,000.00);

5. Under Count Five, for Plaintiff, CITIMORTGAGE to be found to have directly caused Defendant JOANNE PRIEBE to suffer emotional distress with the damages to be proven at trial;

6. Under Count Six, for Plaintiff, CITIMORTGAGE to be found to have directly caused Defendants to suffer emotional distress in regard to their marital relationship with the damages to be proven at trial;

7. Under Count Seven, for punitive damages in an amount of at least Five Hundred

Thousand Dollars ($500,000.00);

8. Under Count Eight, for Defendants' attorneys' fees; and

9. Costs of this action and any other amount which this Court shall deem equitable.

Respectfully submitted,

Sebraien M. Haygood, Esq. #0043905
Haygood & Associates
Attorney for Defendants
1510 Hanna Building
1422 Euclid Avenue
Cleveland, Ohio 44115
(216) 687-1902

JURY DEMAND

Defendants request that these issues of fact be determined by a jury of eight (8) members.

Sebraien M. Haygood, Esq. #0043905
Haygood & Associates
Attorney for Defendants

CERTIFICATE OF SERVICE

A copy of the foregoing Amended Counterclaim was sent by U.S. mail this 11th day of April, 2005, to:

Tony Alexander
Attorney for the Plaintiff CITIMORTGAGE
Lerner, Sampson & Rothfuss
P.O. Box 5480
Cincinnati, Ohio 45201-5480

Huntington National Bank
41 South High Street
Columbus, OH 43287

United States of America
Attorney General
U.S. Department of Justice
Constitution & 10th Street, NW
Room 5111
Washington, DC 20530

United States of America
c/o U.S. Attorney
Northern District of Ohio
United States Courthouse
801 W. Superior Ave., Suite 400
Cleveland, OH 44113-9898

Dollar Bank Federal Savings Bank
1301 East Ninth Street
Cleveland, OH 44114

Sebraien M. Haygood, Esq. #0043905
Haygood & Associates
Attorney for Defendants

EXHIBIT
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9-04-03

Citimortgage
Attn: Customer Service
P.O. Box 790001
St. Louis, MO 63179

Re: Leonard S. Priebe & Joanne Priebe
330 Calvin Dr.
Seven Hills, Ohio 44131
Acc# 0001990567-8

To Whom It May Concern:

Per my telephone discussion with your Customer Service Department, I am requesting a complete payment history and a copy of the original Note and Mortgage on the above captioned account. Your records indicate that a balance is still due on this mortgage. My records show that this loan was paid off with the 7-01-03 mortgage payment. My records show that the first payment was due on 11-01-74 and was paid at closing. My records also show that the last payment was due on 10-01-04. In 1986, 1987 and 1988 , I paid a total of 15 principal payments. All other payments were made through 7-01-03. Based on my records, the 7-01-03 payment should have paid my loan in full.

Your Customer Service told me that the first payment was not due on 11-01-74, but was due on 1-01-75. They also stated that there is no record of any principle payments made on my loan and there is still a balance due on my mortgage. Please send me a copy of the original Note and Mortgage and a complete loan history so that we may resolve this problem.

If you have any questions, please call me at (216) 524-5538 my home or at my office, (216) 429-1441. I am sure that once I review these records that this matter can be easily resolved.

Very truly yours,

EXHIBIT B

12-31-03

Citimortgage
Attn: Stephanie Burgess
P.O. Box 790001
St. Louis, MO 63179

Re: Loan Payment History
Leonard and Joanne Priebe
330 Calvin Dr.
Seven Hills, Ohio
Acc# 0001990567-8

Dear Ms. Burgess:

I have received your letter and a loan history on our account. The loan history which was sent was not complete, it only includes 11-16-98 to the current date. I requested a complete loan history from11-01-74. A complete loan history is required because 15 principle payments were made in the years of 1986, 1987 and 1988. Your loan history does not include these years .I also requested a copy of the original Note and Mortgage because there is a dispute over the first payment date. I contend that the first payment was made on 11-1-74 and Citimortgage states that the first payment was due 1-1-75.

The only way to resolve these differences is to supply me with a **complete loan history from 11-1-74 to the current date and a copy of the original Note and Mortgage.** Please send me this information as soon as possible so that this matter can be resolved. If you have any questions , please call me at (216) 524-5538 or (216) 429-1441.

Very truly yours,

2-12-04

Citimortgage
Attn: Stanley Clifton
P.O. Box 790001
St. Louis, MO 63179

Re: Leonard and Joanne Priebe
330 Calvin Dr.
Seven Hills, Ohio
Acc# 0001990567-8

Dear Mr. Clifton:

I spoke to you on 1-19-04 regarding obtaining a complete loan history on my account and obtaining a copy of the original Note and Mortgage. You told me that you would obtain this information and send it to me by 2-5-04. As of this date I have not received the information. You also gave me Case# 23290579 to track this request on future calls to your office. On 2-12-04, I called Citimortgage to track my request and gave them the case number .I was told that that case was closed and I would have to make another request for this information. I have made over 20 telephone calls to Citimortgage to obtain this information. This is my third letter requesting this information. My requests began on 9-4-03 and Citimortgage has still not supplied the requested information.

I have done just about all I can do to resolve the problems with my account. Without the information that I have requested, it is impossible to determine the correct first payment date and correct balance on my account .It appears that Citimortgage refuses to co-operate with me to resolve these problems. Citimortgage continues to maintain that the first payment date was 1-5-75 and there is still an outstanding balance due on my account. Yet, Citimortgage refuses to send the information to document their claim. I have faxed a copy of my closing statement to Citimortgage Account Inquires Department to substantiate my claim. The closing statement clearly shows that the first payment was due on 10-1-74 and was paid at closing. Citimortgage has sent no information to substantiate their claim that the first payment date was due 1-1-75. Citimortgage also has not sent a complete loan history to substantiate that no principle payments have been made on this account.

I can do no more to resolve this matter. On numerous occasions, I have told Citimortgage that if they supply the complete loan history and the copy of the original Note and Mortgage and I owe any outstanding balance; I will immediate pay whatever is due. As of this date, I will make no further efforts to resolve these problems until Citimortgage supplies the information that I have requested. I do not believe that this is an unreasonable request.

Mr. Clifton, please call me at (216) 524-5538 or (216) 429-1441 if you have any questions or require any additional information from me.

Very truly yours,

EXHIBIT

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VME LLC
4510 EAST 71ST STREET
CLEVELAND, OHIO 44105

SEPTEMBER 3, 2004

TO: CONTAINER AMERICA
4567 EAST 71ST STREET
CLEVELAND, OHIO 44105

ATTN: LEN PLUEBE

WE REGRET TO INFORM YOU THAT WE CANNOT EXTEND CREDIT TO YOUR COMPANY FOR YOUR CONTAINER ORDER.THE REASON FOR OUR DECISION IS DUE TO NEGATIVE INFORMATION ON YOUR PERSONAL CREDIT REPORT. WE USED TRANS UNION CREDIT REPORTING FOR THIS INFORMATION. WE HOPE IN THE FUTURE WE CAN BE OF SERVICE TO YOU.

SINCERELY,

JUDY A. VOJTECH
CREDIT MANAGER